Director's Advisory Committee on Public Works

December 11, 2007

DIR's mission is to improve working conditions for California's wage earners and to advance opportunities for profitable employment in California

John C. Duncan
Director

DIR divisions involved in public works

Angela Bradstreet, Labor Commissioner
Division of Labor Standards & Enforcement (DLSE)

Gregory Govan, Chief
Division of Labor Statistics & Research (DLSR)

Dave Rowan
Chief Deputy Director, DIR
Former Chief, Division of Apprenticeship Standards (DAS)

Director's role in public works

- Issue public works coverage determinations and decisions on administrative appeal
- Issue enforcement decisions arising out of Civil Wage and Penalty Assessment (CWAPA) hearings (LC 1742)
- Approve, monitor and revoke Labor Compliance Programs
- Set prevailing wage rates and decide rate disputes (LC 1773 et seq.)

Role of divisions in public works

<table>
<thead>
<tr>
<th>DLSE</th>
<th>DLSR</th>
<th>DAS</th>
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<tbody>
<tr>
<td>Enforcement</td>
<td>Publishing commercial, residential &amp; apprentice rates, scope of work</td>
<td>Apprenticeship enforcement, program approval, decertification</td>
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Coverage determination process

- Interested party files request to determine coverage of a specific project or type of work (CCR title 8, section 16001)
- Submission by interested parties of documents, arguments, authorities
- Continuing duty of parties to provide Director with relevant documents in their possession
Coverage, continued

• Administrative appeal to Director (CCR title 8, section 16002.5)
  • Deadline for filing appeal is 30 days from issuance of determination
  • Appeal must state full factual and legal grounds
  • Whether to hold hearing within sole discretion of Director
  • Decision subject to judicial review (CCP 1085)

Skilled craftspeople are needed to complete bond work

• $43 billion in bond work approved in 2006
• Labor & Workforce Development Agency estimates need for 188,000 additional craftspeople
• Replace retiring construction trades workers who currently average 47 years of age

Fewer contractors = higher costs

Statistics show a big financial impact if there are too few bidders on construction projects

<table>
<thead>
<tr>
<th>NUMBER BIDDERS</th>
<th>COST IMPACT</th>
</tr>
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<tbody>
<tr>
<td>8+</td>
<td>10-20% less</td>
</tr>
<tr>
<td>6-7</td>
<td>0-10% less</td>
</tr>
<tr>
<td>4-5</td>
<td>0-10% more</td>
</tr>
<tr>
<td>2-3</td>
<td>10-25% more</td>
</tr>
<tr>
<td>1</td>
<td>25-100% more</td>
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</tbody>
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Source: Leland Saylor & Associates

Low quality and schedule delays also result in higher project costs

Division of Labor Standards Enforcement

Angela Bradstreet, Chief/State Labor Commissioner

Mission of the Division of Labor Standards Enforcement

• To vigorously enforce minimum labor standards to ensure employees are not required or permitted to work in substandard, unlawful conditions
• To protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards

Public works educational meeting

Spring 2008

Date and location of training seminars will be announced soon

Those attending today’s meeting will receive invitations
Public works mission

- Public Works Unit investigates and enforces payment of the appropriate prevailing wage rates for all workers engaged in the execution of public works construction projects

What is the definition of public works?

- Public Works: Labor Code sections 1720
- "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds..."

Who does the law protect?

All workers employed in the execution of any contract for public works projects (LC 1772)

What are the responsibilities of the awarding body?

- Recognize prevailing wage violations and report to Labor Commissioner (LC 1726)
- Withhold and retain all amounts required to satisfy a civil wage and penalty assessment issued by the Labor Commissioner (LC 1727)
- Specify in the call for bid and in the contract what the general prevailing wage is for each trade or classification and/or include a statement that copies of prevailing wage rates are on file and available at its principal office (LC 1773.2)

What must public works contractors do to comply with the law?

- Must maintain and furnish certified payroll records (LC 1776)
- Must pay prevailing wage rates (LC 1774 & 1813)
- Must comply with the apprenticeship requirements (LC 1777.5)
- For additional information, see www.dir.ca.gov/dlse

Common mistakes and violations

- Failure to list a worker's information, correct work classification, or paycheck numbers on the certified payroll records
- Failure to pay the appropriate rates and premium rates for work on weekends and holidays
- Misclassification of workers
Common mistakes, continued

- Employment of non-indentured apprentices at apprentice rates
- Deducting and failing to report and pay fringe benefit contributions
- Failure to apply rate increases
- Failure to report and pay training trust contributions

Consequences of non-compliance

- Joint and several liability
- Penalty for nonpayment of prevailing wage rate (LC 1775)
  - $0-50 per calendar day, per worker, per violation
  - Amount of penalty determined by DLSE:
    - Whether failure to pay was good faith mistake
    - Promptly corrected
    - Whether contractor has prior record of non-compliance
    - Whether violation was willful

Consequences, continued

- Penalty for nonpayment of the premium rates/overtime rates and holiday rates (LC 1813)
  - $25 per calendar day, per worker, per violation
- Penalty for non-compliance with certified payroll records requirements (LC 1776)
  - $25 per calendar day, per worker

Debarment proceedings (LC 1777.1)

- Debarment is a penalty for “willful violation” of the prevailing wage laws and/or violation of the law with “intent to defraud”
- “A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligation under the public works laws and deliberately failed or refused to comply with its provisions.”
- Debarred contractors are listed on www.dir.ca.gov/dlse/Debar/html

Significant civil wage and penalty assessment - example 1

- Total amount of CWAPA $255,349.86
- Total wages $164,223.62
- Total 1775 Penalties $81,625
- Total 1813 Penalties $1,825
- Issue: Failure to pay the correct prevailing wage rates
- Craft/classification: Residential framer and finisher; residential carpenter and laborer
- Number of affected workers: 11

Significant civil wage and penalty assessment - example 2

- Total amount of CWAPA $1,876,536.30
- Total wages + training $1,236,386.30
- Total 1775 penalties $598,880
- Total 1813 penalties $41,350
- Issue: Misclassification and nonregistered apprentices
- Craft/classification: Inside wireman, telecommunications technician and cable splicer
- Number of affected workers: 70
Challenges and opportunities for improvement

- Ensure consistent and predictable enforcement of prevailing wage requirements
- Maximize resources to ensure aggressive enforcement

Division of Labor Statistics and Research
Gregory Govan, Chief

Mission

The Division of Labor Statistics and Research is dedicated to serving the people of California by collecting, compiling, and presenting accurate and timely statistics and research relating to the condition of labor in the state

DLSR’s contribution to the prevailing wage program

- Produce two types of prevailing wage determinations:
  1. General wage determinations:
     Issued twice a year and posted online at www.dir.ca.gov/DLSR
  2. Special wage determinations:
     Only issued to awarding bodies upon request for project-specific application

Contribution, continued

- Provide timely and accurate responses to explain the components of the wage determinations:
  - Overtime, travel & subsistence, shift pay, and scope of work
  - Our hotline is open from 8 a.m. to 5 p.m. and is backed up by senior staff
  - Respond to approximately 60,000 written and verbal requests per year

Methodology used to determine the prevailing rate

- By statute, the prevailing wage rate is set by the mode, or the single rate being paid to the greatest number of workers.
Methodology, continued

- By statute, the Director establishes the modal rate from the following sources of information in this order:
  1. Collective bargaining agreements
  2. Federal rates (Davis-Bacon)
  3. Other data such as wage surveys
  4. Rates paid in the nearest labor market area

Special wage determinations

- Involve crafts and classifications or market segments not found in the general wage determinations
- Issued approximately 4 weeks after a request from an awarding body
- Approximately 900 are issued annually (90% of them are for residential projects)

An opportunity for improvement

- To improve the timeliness and availability of residential determinations, the DLSR is planning to:
  1. Issue residential wage determinations on demand
  2. Make them area wide rather than project specific
  3. Make them available to public entities—contractors, developers, & unions

Division of Apprenticeship Standards
Dave Rowan, Former Chief

Apprenticeship

The Division of Apprenticeship Standards provides oversight to California's state-approved apprenticeship programs.

Apprenticeship is a key strategy for meeting the need for skilled workers.

DAS key strategies to meet need for skilled craftspeople

Increased:
- Education about apprenticeship
- Enforcement of apprenticeship-related public works laws
- Effectiveness of existing programs through DAS staff support and oversight
- Teamwork amongst DIR's divisions
Apprentices on public works jobs

- The employment of apprentices on public works jobs is required by the CA Labor Code
- California leads the nation in apprenticeship:
  - 150,000 construction apprentices nationwide
  - 48,500 are in California
  - CA is #1 with 65,000 total apprentices
  - NY is #2 with 20,000
  - Illinois is #3 with 18,500

Education about apprenticeship

- Recruit potential apprentices & employers
  - "I Built It" campaign to start in early 2008
- Educational meetings with contractors and others about public works requirements
- Focus on career technical education by the Governor, Labor & Workforce Development Agency and DIR
- Partnerships with other state agencies such as EDD, WIB's

Enforcement

- Aggressive, consistent enforcement with escalating penalties and debarment when appropriate
- Improved relationships with and performance of Labor Compliance Programs (LCP’s)
- Changing regulations to facilitate compliance with the mandatory use of apprentices on public works projects

Opportunities to create more skilled craftspeople through apprenticeship

- Investigate expansion of apprenticeship programs in the residential marketplace
- Increase graduation rates
- Potential opportunities within existing programs:
  - Shorten apprenticeship terms in some trades
  - Reduce ratios when appropriate
  - DAS can support up to 1/1
  - Create specialty classifications within trades

Public discussion

When it comes to public works, how can DIR communicate better and be more responsive?